

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JESSE MATTHEW DIAZ,

Plaintiff,

v.

ATTORNEY BERNING,

Defendant.

Case No. 2:14-cv-02203-MMD-PAL

ORDER ACCEPTING REPORT AND
RECOMMENDATION OF MAGISTRATE
JUDGE PEGGY A. LEEN

Before the Court is the Report and Recommendation of United States Magistrate Judge Peggy A. Leen ("R&R") relating to plaintiff's failure to comply with the Court's order (dkt. no. 2). (Dkt. no. 3.) Plaintiff was advised that a failure to do so would result in an order dismissing this action. (*Id.*) Because Plaintiff failed to comply with the Court's order, Magistrate Judge Leen submitted her R&R, recommending dismissal. Plaintiff had until May 22, 2015, to object to the R&R. No objection to the R&R has been filed. Instead, on May 28, 2015, Plaintiff filed a document entitled Motion for District Court to Render Justice as Court Sees Fit ("Motion"). (Dkt. no. 4.)

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

1 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
2 magistrate judge's report and recommendation where no objections have been filed. See
3 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
4 of review employed by the district court when reviewing a report and recommendation to
5 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
6 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
7 view that district courts are not required to review "any issue that is not the subject of an
8 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
9 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
10 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
11 which no objection was filed).

12 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
13 determine whether to adopt Magistrate Judge Leen's R&R. The Magistrate Judge found
14 that Plaintiff's application *in forma pauperis* was incomplete and did not contain the
15 proper financial affidavit. The Magistrate Judge further found that Plaintiff's complaint
16 fails to state a claim. Accordingly, the Magistrate Judge ordered Plaintiff to file a
17 complete *in forma pauperis* application and an amended complaint within thirty (30)
18 days. (Dkt. no. 2.) Plaintiff failed to comply with that order, which led the Magistrate
19 Judge to recommend dismissal. (Dkt. no. 3.)

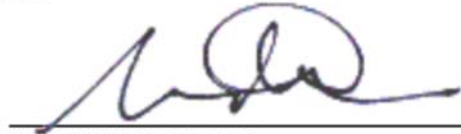
20 In his Motion, Plaintiff indicates that he is pursuing his post-conviction habeas
21 corpus relief in state court and requests that he be permitted to pursue federal habeas
22 relief when appropriate. Plaintiff cannot use this action as a placeholder for any future
23 federal habeas petition. Plaintiff will need to file a new action seeking federal habeas
24 relief.

25 It is therefore ordered, adjudged and decreed that the Report and
26 Recommendation of Magistrate Judge Peggy A. Leen (dkt. no. 3) is accepted and
27 adopted in its entirety.

28 It is further ordered that Plaintiff's complaint (dkt. no. 1) is dismissed.

1 It is further ordered that the Clerk of the Court enter judgment.

2 DATED THIS 22nd day of June 2015.

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5 MIRANDA M. DU
6 UNITED STATES DISTRICT JUDGE
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